



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

GORHAM SCHOOL DISTRICT

Complainant

v.

GORHAM TEACHERS ASSOCIATION,
NEA/NH and JOHN FESSENDEN

Respondent

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CASE NO. T-0276:2

DECISION NO. 86-33

APPEARANCES

Representing the Gorham School District

James Burke, Esq., Counsel

Representing the Gorham Teachers Association, NEA/NH and John Fessenden

John Fessenden, UniServ Director, NEA/NH

Also in Attendance

Conrad Graham, Grievant
Margaret Graham
Robert Bellavance, Superintendent SAU #20
Dot Pelletier, NEA/NH Staff Personnel

BACKGROUND

On February 4, 1986 the Gorham School District ("District") filed a motion for rehearing in case #T-0276:2, arguing the PELRB had found in the original decision (#86-04) that the grievant "refused to participate meaningfully in the step of the grievance procedure at the school board level" and that this violated RSA 273-A:4. The District argues that this is incorrect in that the violation must be of RSA 273-A:5 I (e) and 5, II (d); or in this case, since the grievant did not (arguably) follow the contract grievance procedure, then RSA 273-A:5, II(f), breach of collective bargaining agreement.

Further, the District argues, the PELRB erred in ordering the District to process the grievance contrary to Appeal of Berlin Board of Education,

120 N.H. 226 (1980) which held that grievances pursued outside the process defined in the master contract do not have to be processed by the School Board.

The District further argued that the PELRB did not define "occurrence" although it had the authority to do so. Given that the dispute involves at least a disagreement over which contract applies, the District argues that the PELRB must decide when the "occurrence" took place in order to decide which contract applies. The District argues that the "occurrence" took place on March 7, 1984 (therefore, under the 1981-84 agreement) when the grievant was notified he would not be renewed. The grievant's position is that the "occurrence" took place when there was no job for him on September 4, 1984 (therefore under 1984-86 agreement).

The District further argued that the PELRB erred in that its decision and order imposed upon the district a grievance procedure "vastly different from that contained in the master agreement", by allowing the grievant to continue the grievance despite several failures to follow the contract grievance procedure.

A rehearing on this matter was granted and held at the PELRB office in Concord, N.H. on March 6, 1986.

RULINGS OF LAW

At the re-hearing the District reminded the PELRB that the facts were not in dispute and that the PELRB had found the grievant had not participated properly and had ordered the grievant to do so. The District argued that, (1) by allowing the grievant to pursue the grievance, despite the fault, PELRB was encouraging violation of contract provisions specifically required by RSA 273-A:4; (2) by allowing the grievant to continue the grievance, the PELRB was denying the District the benefit of the contract it bargained for specifically containing a workable grievance procedure; and (3) the PELRB must define "occurrence" in order for the parties to know which contract is applicable.

The Association argued that under the case of Winnacunnet School Board v. Seacoast Education Assn. et al, (Rockingham Superior Court, E-3674-75) the question of an honest difference of opinion (over when the "occurrence" took place) should be left to the arbitrator as a "threshold question".

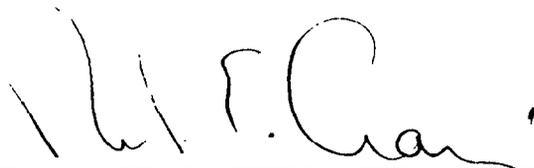
Having reconsidered its decision, after hearing arguments for the second time, it is the PELRB's findings that the "occurrence", which is the subject of the grievance in this case, took place when the grievant was notified he was not to be renewed, that is on or about March 7, 1984. The PELRB further finds that the 1981-84 contract is therefore the applicable contract and that the grievance was not timely filed under that contract.

DECISION AND ORDER

PELRB hereby vacates its original decision and order No. 86-04.

Since the Association has failed to file a timely grievance, the Association cannot compel arbitration on this grievance under the provisions of the applicable 1981-84 contract grievance procedure. In doing so, the Association is found in violation of RSA 273-A:5, II(f) and HEREBY ORDERED to withdraw permanently its request for arbitration in this case.

The Gorham School District is under no further obligation to deal with this grievance.



ROBERT E. CRAIG, Chairman
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

Signed this 20th day of May, 1986.

Chairman Craig and Member Osman voting to vacate original decision (86-04) and dismissal of complaint: Member Hilliard abstaining. Also present, Executive Director, Evelyn C. LeBrun.